Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

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PAGE 01 STATE 120751
ORIGIN SCSE-00

INFO OCT-01 EUR-12 ISO-00 JUSE-00 L-03 SCA-01 /017 R

DRAFTED BY SCA;SCS;RBOYLAN:JS
APPROVED BY SCA;SCS;AFOWLER
JUSTICE-CRIM DIV-MR. JOHN HARRIS
L/SCS-RDALTON (DRAFT)
----------251944Z 043019 /64
P 251844Z MAY 77
FM SECSTATE WASHDC
TO AMEMBASSY BERN PRIORITY

UNCLAS STATE 120751

E.O. 11652: N/A

TAGS: CGEN: (BRAUN, FREDDIE)

SUBJECT: JAT REQUEST: UNITED STATES V. CAPPETRO

REF: BERN 2274

1. IN LETTER OF MAY 13 TO ALL PROSPECTIVE WITNESSES IN SWITZERLAND, UNITED STATES ATTORNEY MICHAEL P. CARNES STATES THAT WITNESSES ATTENDING TRIAL PURSUANT TO REQUEST ISSUED UNDER JAT ARTICLE 23 WOULD NOT BE SUBJECT TO DETENTION OR PROSECUTION BY ANY LOCAL, STATE OR FEDERAL AUTHORITY FOR ANY ACT COMMITTED PRIOR TO TRAVELING FROM SWITZERLAND TO U.S. FOR PURPOSE OF TESTIFYING. LETTERS WERE FORWARDED TO ETTLER FOR DISTRIBUTION TO WITNESSES.

2. LETTER DID NOT ADDRESS QUESTION POSED BY BRAUN CONCERNING POSSIBILITY OF ARREST IN CONNECTION WITH CIVIL SUIT. ALTHOUGH PHYSICAL SEIZURE OF AN INDIVIDUAL TO ASSURE HIS APPARENCE AT A CIVIL SUIT IS RARE, IT IS POSSIBLE UNDER LAWS OF SOME STATES. DEPT AND DEPT OF JUSTICE CONSIDER THAT
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JAT ARTICLE 27 PROTECTS A WITNESS FROM ARREST (I.E. RESTRICTION OF PERSONAL LIBERTY) IN CIVIL CASE AS WELL AS CRIMINAL MATTERS.

3. WITNESS SHOULD BE INFORMED THAT ARTICLE 27 DOES NOT MAKE HIM IMMUNE FROM SERVICE OF PROCESS (I.E. DELIVERY OF A CIVIL SUMMONS). IF BRAUN IS SERVED WITH A CIVIL SUMMONS

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WHILE IN U.S., A CIVIL SUIT COULD FOLLOW WHICH MIGHT LEAD TO A JUDGEMENT AGAINST HIM.

4. SUGGEST EMBASSY LETTER TO BRAUN INCLUDE FOLLOWING LANGUAGE: "THE DEPARTMENT OF JUSTICE HAS INFORMED THE DEPARTMENT OF STATE THAT ARTICLE 27 OF THE TREATY BETWEEN THE UNITED STATES AND THE SWISS CONFEDERATION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS IS SELF-EXECUTING; IN OTHER WORDS, IT PROTECTS A WITNESS FROM PROSECUTION WITHOUT A SPECIFIC GRANT OF IMMUNITY. NEVERTHELESS, THE DEPARTMENT OF JUSTICE REITERATES THE STATEMENT MADE IN THE LETTER ADDRESSED TO YOU BY UNITED STATES ATTORNEY MICHAEL P. CARNES ON MAY 13, AND CONFIRMS THAT WHILE YOU ARE IN THE UNITED STATES FOR THE PURPOSE OF TESTIFYING, THE UNITED STATES GOVERNMENT WILL BRING NO CRIMINAL CHARGES AGAINST YOU WHICH ARE BASED ON EVENTS THAT TOOK PLACE BEFORE YOUR DEPARTURE FROM SWITZERLAND.

"UNDER OUR CONSTITUTION, THE DEPARTMENT OF JUSTICE IS NOT IN A POSITION TO GUARANTEE THAT NO EFFORT WILL BE MADE BY A STATE TO ARREST YOU ON STATE CRIMINAL CHARGES, OR BY A PRIVATE PARTY TO FILE A CIVIL SUIT IN CONNECTION WITH WHICH AN ATTEMPT WILL BE MADE TO RESTRICT YOUR LIBERTY. HOWEVER, IF AN EFFORT OF THAT TYPE IS MADE, THE DEPARTMENT OF JUSTICE CAN AND WILL SEEK AN ORDER FROM THE FEDERAL DISTRICT COURT ENJOINING SUCH ACTION". VANCE

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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
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Disposition History: n/a
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SAS ID: 2368728
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Status: NATIVE
Subject: JAT REQUEST: UNITED STATES V. CAPPETRO
TAGS: CGEN, (BRAUN, FREDDIE)
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Type: TE
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